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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,707	07/03/2001	Thomas Zickell	NEI-010XX	2439
7590 05/09/2007				
Bourque & Associates, P.A. Suite 303 835 Hanover Street Manchester, NH 03104				
			EXAMINER	
			AUGHENBAUGH, WALTER	
			ART UNIT	PAPER NUMBER
			1772	
			MAIL DATE	DELIVERY MODE
			05/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/898,707	Applicant(s) ZICKELL, THOMAS	
	Examiner Walter B. Aughenbaugh	Art Unit 1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): all rejections of claims 32-43 (claims 32-43 are cancelled).
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 21-31 and 44.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

ADVISORY ACTION

Acknowledgement of Applicant's Amendments

1. Applicant's cancellation of claims 32-43 in the After Final Amendment filed May 1, 2007 has been entered.
2. Applicant incorrectly states that claim 32 "remain[s] pending" on page 6 (lines 4-5) of the After Final Amdt. Evidence that shows Applicant intended to (and did) cancel claim 32, other than the fact the claim 32 is cancelled in the set of claims filed May 2, 2007, is that Applicant states "Applicant has canceled claim 32 herein" on page 6 (line 15) of the After Final Amdt.

Response to Arguments

3. Applicant's arguments regarding the 35 U.S.C. 112, second paragraph, rejection of claim 21 presented on pages 6-10 of the After Final Amdt. have been fully considered but are not persuasive.

The basis for rejection of claim 21 under 35 U.S.C. 112, second paragraph, is clearly stated on the record. Paragraph 5 of Office Action mailed June 22, 2006; paragraph 6 of previous Office Action mailed February 5, 2007.

Applicant's characterization of the definition of "surface" Applicant provides in lines 4-6 of page 8 of the After Final Amdt. as "narrow" is unsupported. How is this definition of "surface" "narrow"?

Applicant's arguments presented on pages 6-10 of the After Final Amdt. seems to ignore the discussion of the basis for rejection in paragraph 6 of previous Office Action mailed February 5, 2007. Applicant cannot overcome the rejection of record without addressing the basis for rejection. This discussion is copied at the top of the following page:

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A layer would not “contact” the upper surface of a region that also is the upper surface of the layer because there is nothing for the layer to actually “contact”. Contact occurs between two objects: for example, A contacts B. In the language at issue, the first layer corresponds to A in the hypothetical “A contacts B”, but there is no B in the language at issue. The first region cannot correspond to B because the upper surface of the first region is the same as the upper surface of the first layer: the upper surface of the first layer is the upper surface of the region, so the first layer cannot contact something that is a component of the first layer.

Paragraph 6 of previous Office Action mailed February 5, 2007.

A region is not an object. Applicant’s citation of a definition in lines 11-13 of page 8 of the After Final Amdt. that is worded differently from the definition provided in lines 4-6 of page 8 of the After Final Amdt. only serves to support the position of the Office: a region is not an “object or a body”, so a layer cannot contact a region, because a region does not have a surface because it is not an “object or a body”. The definition cited by Applicant in lines 11-13 of page 8 of the After Final Amdt. requires that, if a surface of something exists, that something must be an “object or a body”. A region is not an “object or a body”. Regions do not have surfaces. Contact occurs between two objects: for example, A contacts B (paragraph 6 of previous Office Action mailed February 5, 2007).

On page 9 of the After Final Amdt., Applicant states “Applicant has provided a reading of the claim language on the original filed figure 1 as shown below”. Examiner wishes to make it clear on the record that the figure shown on page 9 of the After Final Amdt. is not the “original filed figure 1”. The original Fig. 1 has numerical characters that identify the various parts of the article. The figure shown on page 9 of the After Final Amdt. does not show these numerical characters, and includes labels (in text) that were not in the original Fig. 1., some of which may not be supported in the specification as originally filed. Applicant did not attempt to identify support for these labels in the After Final Amdt.

The basis for rejection of claim 21 under 35 U.S.C. 112, second paragraph, is clearly stated on the record. Paragraph 5 of Office Action mailed June 22, 2006; paragraph 6 of previous Office Action mailed February 5, 2007.

4. Applicant's arguments regarding the 35 U.S.C. 102 rejection of claims 21 and 44 presented on pages 10-16 of the After Final Amdt. have been fully considered but are not persuasive.

Applicant's arguments here do not specifically address the rejection of record by providing particular reasons why the statements made in the rejection (that are of record) are incorrect. Rather, Applicant has made general statements that the Office "cannot" state certain things (pages 11 and 14-15), without giving any particular reasons for why the Office "cannot" state these things, while it is also unclear if Applicant has any basis for attributing some or all of these statements to the Office (where in the Office Action are these statements made?).

Also of note is that Applicant apparently considers the rejection of record to be based on solely Fig. 10 and 11 (line 5 of page 11 and line 10 of page 14) while the rejection is based in part upon Fig. 9. See rejection of record. Further of note is Applicant's unsupported characterization of the different components relied upon in the rejection of record (i.e. as these components are relied upon in the Office Action) as "multiple roofing materials" (line 5 of page 11 and line 9 of page 14). Applicant's characterization of the components relied upon in the Office Action (i.e. as these components are relied upon in the Office Action) as "multiple roofing materials" is unsupported. Furthermore, the relevance of many of Applicant's statements on pages 10-16 of After Final Amdt. cannot be ascertained these statements do not appear to be addressed to particular grounds for rejection that are actually of record. The relevance of

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Applicant's reference to "one skilled in the art at the time of the invention" (lines 1-2 of page 12 and lines 6-7 of page 15) also cannot be ascertained since the only rejection of record that is based upon art is a rejection under 35 U.S.C. 102.

Conclusion


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Walter B. Aughenbaugh
5/05/07

WBA


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5/7/7